

No. 18,448 ✓

IN THE

**United States Court of Appeals
For the Ninth Circuit**

HERMAN G. GUMATAOTAO, vs. GOVERNMENT OF GUAM,	<i>Appellant,</i> <i>Appellee.</i>
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OPENING BRIEF OF APPELLANT

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Appellee.

OPENING BRIEF OF APPELLANT

JURISDICTION

The jurisdiction of the appellate division of the District Court of Guam over this criminal proceeding is sustained by 48 U.S.C. Section 1424(a) (1958 ed.) and Guam Code Civ. Proc. (1953), Section 63. The jurisdiction of this court to review the judgment of the appellate division of the District Court of Guam appealed from is sustained by 28 U.S.C. Section 1291 (1958 ed.) and 28 U.S.C. Section 1294(4) (Supp. III, 1958 ed.).

The notice of appeal (R., doc. 9A) is the pleading which shows the existence of the jurisdiction of the appellate division of the District Court of Guam over this criminal proceeding. The notice of appeal (R., doc. 24) is the pleading which shows the existence of

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the jurisdiction of this court to review the judgment of the appellate division of the District Court of Guam appealed from.

THE CASE

On January 12, 1962, appellee filed an amended information stating that appellant,

“ . . . on or about the 24th day of June, 1961, . . . did *cause* a certain minor, namely, Enrique F. Santos, age 15 years, to become in need of the care and protection of the Juvenile Court, in violation of Section 273(a) [273a] of the Penal Code of Guam.” (R., doc. 4, p. 1 (emphasis added).)

Upon the trial appellee attempted to prove the childhood of Enrique F. Santos by an order entered in a Juvenile Court of Guam proceeding (R., doc. 14, pp. 9-10), of which order the trial court took judicial notice:

“The order recited that Santos was born September 20, 1945.” (R. doc. 14, p. 10.)

At the close of appellee's evidence appellant moved, pursuant to Rule Regulating Practice in Criminal Cases Before the Island Court of Guam 13, for entry of judgment of acquittal,

“ . . . I will move at this time, on behalf of the defendant, for judgment in favor of the defendant.” (R., doc. 14, p. 10)

which motion was denied. (R., doc. 14, p. 10.)

Thereafter, on appellant's motion (R., doc. 14, pp. 13-14) and without objection by appellee (R., doc. 14,

p. 14) the trial court took judicial notice (R., doc. 14, p. 14) of the records of several other Juvenile Court of Guam proceedings (R., doc. 14, pp. 11-14), which records prove that on June 24, 1961, and for a long time prior thereto, Enrique F. Santos was in need of the care and protection of the Juvenile Court of Guam or, to use the exact words of the trial court, that Enrique F. Santos,

“ . . . had been declared delinquent prior to the date of the alleged commission of the offense, the juvenile having been involved in half a dozen other prior violations.” (R., doc. 6, p. 1.)

Nevertheless, appellant was found guilty (R., doc. 6, p. 2), and judgment was entered against him on February 23, 1961 (R., doc. 9), which judgment was affirmed by the appellate division of the District Court of Guam on December 26, 1962. (R., doc. 20.)

ERRORS RELIED UPON

The following are the errors upon which appellant relies:

1. Since one of the elements of the crime alleged (the childhood of Enrique F. Santos) was not proven beyond a reasonable doubt, *the denial* by the trial court of appellant's motion for entry of judgment of acquittal and *the entry* of judgment by the trial court against appellant.

2. As Enrique F. Santos was already in need of the care and protection of the Juvenile Court of

Guam, appellant could not have caused him to become in need of such care and protection. Hence, *the entry* of judgment by the trial court against appellant.

ARGUMENT

1. SINCE ONE OF THE ELEMENTS OF THE CRIME ALLEGED (THE CHILDHOOD OF ENRIQUE F. SANTOS) WAS NOT PROVEN BEYOND A REASONABLE DOUBT, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR ENTRY OF JUDGMENT OF ACQUITTAL AND IN ENTERING JUDGMENT AGAINST APPELLANT.

Childhood is one of the elements of the crime alleged:

“Any person who commits any act or omits the performance of any duty, which act or omission causes a *child* to become in need of the care and protection of the Juvenile Court, shall be guilty of a misdemeanor” Guam Pen. Code (1953), Section 273a (emphasis added).

“When used in this title, unless the context otherwise requires:

“

“ . . . ‘*Child* . . .’ means a person less than eighteen years of age.” Guam Code Civ. Proc. (1962 Cum. Pocket Supp.), Section 251 (emphasis added).

This element of the alleged crime must, of course, be proven beyond a reasonable doubt:

“. . . The prosecution is required to prove beyond a reasonable doubt—that is, to a moral certainty—*every fact or element of the crime charged*, each independent fact necessary to the

chain of circumstances to show . . . the guilt of the accused . . .” 18 Cal. Jur. 2d, Evidence Section 112 (emphasis added) (footnotes omitted).

On the other hand it seems clear that there is no requirement of proof beyond a reasonable doubt in a Juvenile Court of Guam proceeding for the reason that such a proceeding is not criminal in nature:

“

“No adjudication by the court of the status of any child shall be deemed a conviction, . . . nor shall any child be found guilty or be deemed a criminal by reason of such adjudication”

Guam Code Civ. Proc. (1953), Section 263.

The only evidence offered by appellee upon the trial tending to prove the childhood of Enrique F. Santos was an order entered in a Juvenile Court of Guam proceeding. (R., doc. 14, pp. 9-10.) And as that order was not based upon proof beyond a reasonable doubt, one of the elements of the crime alleged (the childhood of Enrique F. Santos) was not proven beyond a reasonable doubt. Therefore the trial court erred in denying appellant's motion for entry of judgment of acquittal and in entering judgment against appellant.

2. AS ENRIQUE F. SANTOS WAS ALREADY IN NEED OF THE CARE AND PROTECTION OF THE JUVENILE COURT OF GUAM, APPELLANT COULD NOT HAVE CAUSED HIM TO BECOME IN NEED OF SUCH CARE AND PROTECTION. HENCE, THE TRIAL COURT ERRED IN ENTERING JUDGMENT AGAINST APPELLANT.

Penal Code of Guam (1953), Section 273a defines the crime of *causing* the delinquency of a child:

“Any person who commits any act or omits the performance of any duty, which act or omission *causes* a child to become in need of the care and protection of the Juvenile Court, shall be guilty of a misdemeanor” (Emphasis added.)

Upon the trial appellant proved (R., doc. 14, pp. 11-14) that on June 24, 1961, Enrique F. Santos was already in need of the care and protection of the Juvenile Court of Guam or, to use the exact words of the trial court, that Enrique F. Santos,

“ . . . had been declared delinquent prior to the date of the alleged commission of the offense, the juvenile having been involved in half a dozen other prior violations.” (R., doc. 6, p. 1.)

It necessarily follows that, as Enrique F. Santos was already in need of the care and protection of the Juvenile Court of Guam, appellant could not have caused him to become in need of such care and protection. Hence, the trial court erred in entering judgment against defendant.

Respectfully submitted,

TURNER, BARRETT & FERENZ,

By HOWARD G. TRAPP,

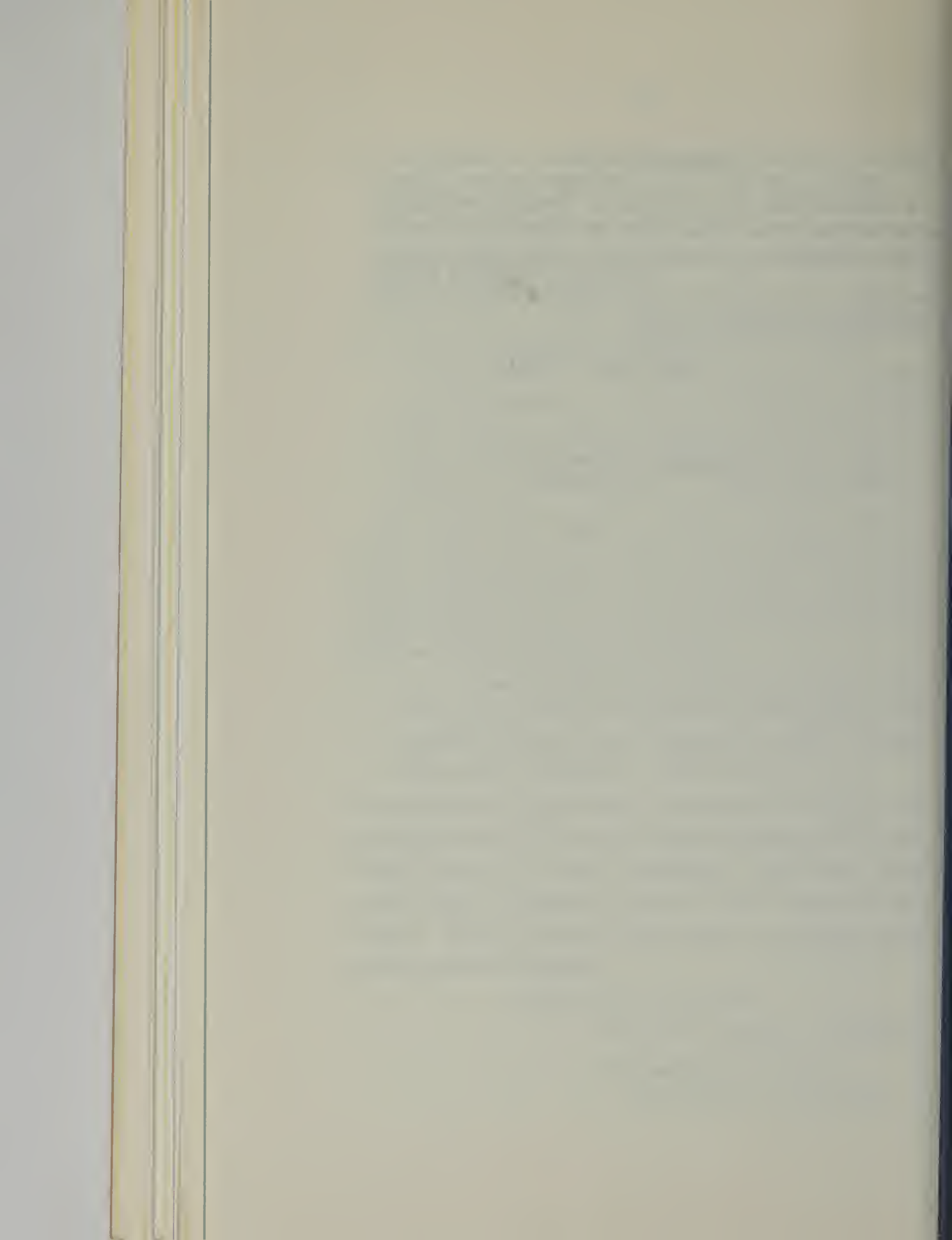
Attorneys for Appellant.

CERTIFICATION

I certify that in connection with the preparation of this brief I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, the foregoing brief is in full compliance with those rules.

HOWARD G. TRAPP.

(Appendix Follows)



Appendix.



Appendix

STATUTE AND RULE CITED

“The courts of appeals shall have jurisdiction of appeals from all final decisions of . . . the District Court of Guam” 28 U.S.C. Section 1291 (1958 ed.).

“Appeals from reviewable decisions of the . . . territorial courts shall be taken to the courts of appeals as follows:

“

“(4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit.” 28 U.S.C. Section 1294 (Supp. III, 1958 ed.).

“. . . The District Court of Guam . . . shall have such appellate jurisdiction as the legislature may determine” 48 U.S.C. Section 1424(a) (1958 ed.).

“The District Court of Guam shall have jurisdiction of appeals from the judgment, orders and decrees of the Island Court in criminal causes” Guam Code Civ. Proc. (1953), Section 63.

“When used in this title, unless the context otherwise requires:

“(a) ‘Court’ means Juvenile Court.

“(b) ‘Judge’ means judge of the Juvenile Court.

“(c) ‘Child or Minor’ means a person less than eighteen years of age.

“(d) ‘Adult’ means a person eighteen years of age or older.

“(e) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this act.” Guam Code Civ. Proc. (1962 Cum. Pocket Supp.), Section 251.

“When a child is found by the court to come within the provisions of Section 252 of this Title, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction over said child. Upon such decree the court may by order duly entered proceed as follows:

“(a) Place the child on probation or under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court shall determine. Probation shall mean casework services during a continuance of the case. Probation shall not be ordered or administered as a punishment, but as a measure for the protection, guidance and well-being of the child and his family.

“(b) Commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes, or under the guardianship of a suitable person. Such commitment shall be for an indeterminate period, but in no event shall continue beyond the child’s twenty-first birthday. In committing a child to a private institution or agency the court shall select one that is approved by the Governor of Guam.

“(c) The court may cause any child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist or psychologist, and for that purpose may place the child in a hospital or other suitable facility.

“(d) Order such care and treatment as the court may deem best, except as herein otherwise provided. In support of any order or decree the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of this Title, to do or omit to do any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the child. In case of failure to comply with such requirement, the court may proceed against such persons for contempt of court.

“(e) The court may dismiss the petition or otherwise terminate its jurisdiction at any time.

“No adjudication by the court of the status of any child shall be deemed a conviction, nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be found guilty or be deemed a criminal by reason of such adjudication, nor shall any child be charged with crime or convicted in any court, except as provided in Section 255 of this Title. The disposition made of a child, or any evidence given in the court, shall not operate to disqualify the child in any future classified service application or appointment.

“Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning such child as the court may at any time require.” Guam Code Civ. Proc. (1953), Section 263.

“Any person who commits any act or omits the performance of any duty, which act or omission causes a child to become in need of the care and protection of the Juvenile Court, shall be guilty of a misdemeanor, may be tried for such offense in the Juvenile Court, and upon conviction may be punished by a fine not exceeding \$500, or by imprisonment not exceeding one year, or by both such fine and imprisonment.” Guam. Pen. Code (1953), Section 273a.

“(a) *Motion for Judgment of Acquittal.* The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant’s motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

“(b) *Reservation of Decision on Motion.* If a motion for judgment of acquittal is made at the close of the government’s evidence, the court may reserve decision on the motion, and decide the motion at the conclusion of the trial.” Rule Regulating Practice in Criminal Cases Before the Island Court of Guam 13.

EXHIBITS

Appellee’s 1 (check).....	(R., dock. 14, pp. 2-8)
Appellee’s 2 (check).....	(R., doc. 14, pp. 2-8)
Appellant’s A (record).....	(R., doc. 14, pp. 11-14)
Appellant’s B (record).....	(R., doc. 14, pp. 11-14)
Appellant’s C (record).....	(R., doc. 14, pp. 11-14)
Appellant’s D (record).....	(R., doc. 14, pp. 11-14)
Appellant’s E (record).....	(R., doc. 14, pp. 11-14)
Appellant’s F (record).....	(R., doc. 14, pp. 11-14)

